Matter of Cordrey

Del. Supr. No. 257, 1999 (7/29/99) Board Case Nos. 100, 1997 and 12, 1998

<u>Disciplinary Rules</u>: DLRPC 1.2(a), 1.3, 1.4(a), 3.2 and 8.4(d)

Sanctions Imposed: Additional Two Years of Probation

The Delaware Supreme Court approved the findings and recommendations of a panel of the Board on Professional Responsibility (the "Board") concerning John H. Cordrey, Esquire (the "Respondent"), a member of the bar since 1980 with an office in Georgetown. Before the panel was a petition to modify the terms of probation which Respondent had previously received.

On September 12, 1997, the same panel of the Board on Professional Responsibility held a hearing at which Respondent's conduct in Board Case No. 32, 1997 was addressed. Based upon the facts presented at that hearing, the panel recommended that as a result of the violations which had been established, Respondent should be given a public reprimand with a one-year period of probation subject to certain conditions. On February 26, 1998, the Supreme Court agreed with that recommendation and imposed the sanction on Respondent. Although the two sets of circumstances which gave rise to Board Case Nos. 100, 1997 and 12, 1998 had occurred before the time that the panel issued its prior decision, one of the matters had not progressed sufficiently far enough through the ODC's investigative process to be brought before the panel in 1997 and the other matter was not brought to the ODC's attention until early 1998.

Board Case No. 100, 1997

In November 1993, Respondent was retained to prosecute a personal injury action. The Respondent admitted that he missed the statute of limitations for filing the action and that he failed to notify the client of that fact.

Board Case No. 12, 1998

In February 1997, the Respondent was retained in connection with a Court of Chancery complaint. The Respondent obtained an extension of time to respond to the complaint. Respondent subsequently requested and received an additional extension of time to respond but

failed to file any response to the complaint. As a result, the Court of Chancery issued a Rule to Show Cause to which Respondent failed to respond. Ultimately, a default judgment was entered against the client and Respondent was ordered to pay the opposing party's attorneys' fees. The Default judgment was set aside by the Court of Chancery conditioned upon the payment of costs and attorneys' fees. Respondent subsequently paid those amounts. Respondent has admitted that he neglected the litigation.

Respondent admitted that his conduct violated the following rules: (1) Rule 1.2(a) of the Delaware Lawyers' Rules of Professional Conduct, which requires a lawyer to abide by a client's decisions concerning the objectives of the representation and to consult with the client as to the means by which they are to be pursued; (2) Rule 1.3, which requires that a lawyer act with reasonable diligence and promptness in the representation of a client; (3) Rule 1.4(a), which mandates that a lawyer keep a client reasonably informed about the progress of a matter; (4) Rule 3.2, which provides that a lawyer must make reasonable efforts to expedite litigation consistent with the interest of his or her client; and (5) Rule 8.4(d), which provides that it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice.

Two aggravating factors were considered. First, Respondent has a prior disciplinary record which includes three private admonitions: (1) in 1988, for violation of Rules 1.3 and 8.1(b) in connection with his handling of a domestic relations case and (2) additional private admonitions in 1993 and 1995 as a result of violations of Rule 3.4(c) for his failure to comply with mandatory continuing legal education requirements. As described above, Respondent also received a public reprimand early last year. As an additional aggravating factor, the Respondent has been in practice since 1980.

Six factors were considered in mitigation. First was the absence of any dishonesty or selfish motive on the part of Respondent with respect to the challenged conduct. Second, Respondent expressed remorse and knowledge of the wrongfulness of his conduct. Third, Respondent made full disclosure of the underlying facts to the ODC and cooperated fully. Fourth, Respondent made restitution to the clients to the extent that they had suffered injury as a result of his conduct. He also refunded the retainer which had been given to him by the clients and paid the attorneys' fees which were the condition of the rescission of the default judgment.

The fifth mitigating factor was the subject of psychiatric reports which were presented to the panel as well as testimony given by Respondent.

Based upon her evaluation of Respondent. The Respondent's psychiatrist concluded that Respondent has a phobic disorder with baseline anxiety which resulted in a pattern of postponement and procrastination. The psychiatrist concluded that Respondent had improved during the course of her treatment of him, although she recommends that he

continue treatment to maintain the gains he has made. The Respondent also has made substantial changes to his office management practice based upon his consultations with members of the Professional Guidance Committee to ensure that numerous reminder dates are calendared to guarantee that deadlines, such as statutes of limitations, are not missed.

The final mitigating factor as to which evidence was presented relates to the delay in the disciplinary proceedings. The ODC advised the panel that if all three complaints (including Board Case No. 32, 1997) had been investigated and evaluated at the same time, the ODC would have sought to consolidate the cases and would have recommended that the appropriate sanction for all three would have been a single public reprimand. Additionally, the conduct in the present complaints is quite similar to the conduct underlying the matter for which the public reprimand was previously recommended.

The Court approved the panel's recommendation that the Respondent's existing probation should be modified to be extended for an additional two-year period, subject to the conditions of cooperation and quarterly reporting. Kenneth S. Clark, Jr., Esquire, agreed to act as practice monitor for Respondent. The Respondent was directed to continue throughout the period of his probation with his counseling with his psychiatrist.